



SMALL BUSINESS RESERVE PROGRAM

INVITATION FOR BIDS

SOLICITATION NO. DHMH OPASS – 12-10923

Issue Date: June 15, 2012

OFFICE OF FINANCE – MEDICAL CARE PROGRAMS

Appraisal Services for Nursing Homes Reimbursed by the Maryland Medicaid Program

NOTICE

Prospective Bidders who have received this document from the Department of Health and Mental Hygiene's web site or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this IFB, should immediately contact the Procurement Officer and provide their name and mailing address so that addenda to the IFB or other communications can be sent to them.

Minority Business Enterprises are Encouraged to Respond to this Solicitation

Notice to Bidders

This is a Small Business Reserve Procurement for which award will be limited to Certified Small Business vendors. Only businesses that meet the statutory requirements set forth in State Finance and Procurement Article, §§ 14-501 – 14-505, Annotated Code of Maryland, **and who are registered with the Department of General Services Small Business Reserves Program** are eligible for award of a contract.

For the purposes of a Small Business Reserve Procurement, a small business is a business, other than a broker, that meets the following criteria:

- **The business is independently owned and operated;**
- **The business is not a subsidiary of another business;**
- **The business is not dominant in its field of operation;**
- **The wholesale operations of the business did not employ more than 50 persons, and the gross sales of the business did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years;***
- **The retail operations of the business did not employ more than 25 persons, and gross sales of the business did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years;***
- **The manufacturing operations of the business did not employ more than 100 persons, and the gross sales of the business did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years;*** and
- **The construction operations of the business did not employ more than 50 persons, and the gross sales of the business did not exceed an average of \$7,000,000 in its most recently completed 3 fiscal years.***

***If a business has not existed for three years, the gross sales average shall be the average for each year or part of a year during which the business has been in existence.**

Further information on the certification process is available at www.dgs.state.md.us and click on the Small Business Reserve hyperlink.

VENDORS AND CONTRACTORS ENCOURAGEMENT OF PARTICIPATION STATEMENT

The State of Maryland is actively seeking to increase participation from businesses and organizations in the procurement of goods and/or services. Accordingly, all potential bidders are encouraged to complete the "Vendor/Contractor Survey", which is on the following page. We ask that you supply any comments regarding the solicitation process or documents and/or the reason(s) for declining to bid. Please return this form either with your submission package or in an envelope addressed to the Issuing Office, identified on page 1 in this Invitation For Bids even if you are not bidding on this solicitation.

STATE OF MARYLAND
NOTICE TO BIDDERS/CONTRACTORS

In order to help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your bids. If you have chosen not to bid on this Contract, please fax this completed form to: 410-333-5958 to the attention of the Procurement Officer.

Title: Appraisal Services for Nursing Homes Reimbursed by the Maryland Medicaid Program
Solicitation No: DHMH OPASS –12-10923

1. If you have responded with a "no bid", please indicate the reason(s) below:

- ☐ Other commitments preclude our participation at this time.
- ☐ The subject of the solicitation is not something we ordinarily provide.
- ☐ We are inexperienced in the work/commodities required.
- ☐ Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
- ☐ The scope of work is beyond our present capacity.
- ☐ Doing business with Maryland Government is simply too complicated. (Explain in REMARKS section.)
- ☐ We cannot be competitive. (Explain in REMARKS section.)
- ☐ Time allotted for completion of the bid/bids is insufficient.
- ☐ Start-up time is insufficient.
- ☐ Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
- ☐ Bid requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
- ☐ MBE requirements. (Explain in REMARKS section.)
- ☐ Prior State of Maryland Contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
- ☐ Payment schedule too slow.
- ☐ Other: _____

2. If you have submitted a bid, but wish to offer suggestions or express concerns, please use the Remarks section below. (Use reverse or attach additional pages as needed.)

REMARKS:

Bidder Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

KEY INFORMATION SUMMARY SHEET

**STATE OF MARYLAND
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
Invitation for Bids**

**APPRAISAL SERVICES FOR NURSING HOMES REIMBURSED BY THE MARYLAND
MEDICAL PROGRAM**

Solicitation Number: DHMH OPASS –12-10923

IFB Issue Date: June 15, 2012

IFB Issuing Office: Maryland Department of Health and Mental Hygiene

Procurement Officer: Sharon R. Gambrill, CPPB
Office of Procurement and Support Services
201 W. Preston St., Room 416B, Baltimore, MD 21201
Office Phone: (410) 767-5816 Fax#: (410) 333-5958
e-mail: gambrills@dhmh.state.md.us

Contract Officer: Allegra Daye
(for internal DHMH informal purposes only)

Contract Monitor: Wendell Miller, Chief
Medical Care Programs – Office of Finance
201 West Preston Street, Room 219
Baltimore, MD 21201
Office Phone: 410-767-5194 Fax#: (410) 333-5321
e-mail: wmiller@dhmh.state.md.us

Bids are to be sent to: Maryland Department of Health and Mental Hygiene
Office Procurement and Support Services
201 West Preston Street, Room 416B
Baltimore, MD 21201
Attention: Sharon Gambrill

Pre-Bid Conference: June 29, 2012 @ 2:00 p.m., Local Time
Department of Health and Mental Hygiene
201 West Preston Street, Room L-1
Baltimore, Maryland 21201

Closing Date and Time: July 11, 2012 at 2:00 p.m., Local Time

Public Bid Opening: July 11, 2012 at 2:00 p.m. Local time
1st Floor, Room 100
Department of Health & Mental Hygiene
201. West Preston Street
Baltimore, MD 21201

MBE Subcontracting Goal: 25%

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SECTION 1 - GENERAL INFORMATION

1.1 Summary Statement

- 1.1.1 The Maryland Department of Health and Mental Hygiene (DHMH), Medical Care Programs – Office of Finance is issuing this Invitation for Bid to qualified firms to perform appraisals of Medical Assistance nursing home providers.
- 1.1.2 It is the State's intention to obtain services, as specified in this Invitation for Bid, from a Contract between the successful Bidder and the State.
- 1.1.3 The Department intends to make a single award as a result of this IFB.
- 1.1.4 Bidders, either directly or through their sub-contractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation.

1.2 Abbreviations and Definitions

For purposes of this IFB, the following abbreviations or terms have the meanings indicated below:

- a. **Appeal** – A written letter from the provider to the Department when the provider is in disagreement with a cost settlement amount that the provider requests to be brought before the Nursing Home Appeal Board for resolution.
- b. **Bidder** – An entity that submits a bid in response to this IFB.
- c. **“Breakdown” method** - A method of estimating physical depreciation entails estimating all items of depreciation individually (physical, functional & obsolescences) and then adding the individual estimates together and deduction the sum from the estimated reproduction or replacement cost
- d. **Certification of Need (CON)** – a legal document required in many states and some federal jurisdictions before proposed acquisitions, expansion or creation of facilities are allowed. The purpose is intended to ensure that the new health care facilities & services that are developed in MD on an as needed basis and that the most cost-effective approach is used in meeting identified needs. Cost associated with CON program are not be included as part of the facility’s appraised value.
- e. **COMAR** – Code of Maryland Regulations available on-line at www.dsd.state.md.us
- f. **Contract** – The Contract awarded to the successful Bidder pursuant to this IFB. The Contract will be in the form of Attachment A.
- g. **Contract Monitor (CM)** – The State representative for this project that is primarily responsible for contract administration functions, including issuing written direction, compliance with terms and conditions, monitoring this project to ensure compliance with the terms and conditions of the contract, and in achieving on budget/on time/on target (e.g., within scope) completion of the project.
- h. **Contract Officer** – Office of Procurement & Support Services (OPASS) designated individual to facilitate the procurement process.
- i. **Contractor** – The selected Bidder that is awarded a Contract by the State.

- j. DHMH or the Department** – Maryland Department of Health and Mental Hygiene.
- k. Fiscal Year** – A 12 month period used by the Department for budgeting and financial reporting purposes, starting on July 1 and ending on June 30 of the following year.
- l. Invitation for Bids (IFB)** – This Invitation for Bids issued by the Maryland Department of Health and Mental Hygiene, Medical Care Programs – Office of Finance, Solicitation Number OPASS-12-10923 dated June 15, 2012, including any addenda.
- m. Limited Appraisal** – An appraisal done with limitation in analyses, procedures, or scope. It is an appraisal of real estate and equipment under and resulting from invoking the departure provision of Uniform Standard of Professional Appraisal Standards (USPAP).
- n. Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland.
- o. MBE** – A Minority Business Enterprise certified by the Maryland Department of Transportation under COMAR 21.11.03.
- p. Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov - keyword State Holidays.
- q. Notice to Proceed** – Letter from Contract Monitor to contractor stating the date the contractor can begin work subject to the conditions of the contract.
- r. Procurement Officer** – The State representative for the resulting Contract. The Procurement Officer is responsible for the Contract and is the only State representative that can authorize changes to the Contract. DHMH may change the Procurement Officer at any time by written notice to the Contractor.
- s. Segregated Cost** - Designed to enable the appraiser to give separate consideration to all of the major construction assemblies or systems (groups or components) of a building with a minimum of time-consuming counting & measuring, and to systematically arrive at a reliable replacement cost in a reasonably short time.
- t. State** – the State of Maryland.

1.3 Contract Type

The Contract that results from this IFB shall be an Indefinite Quantity with Firm Fixed Unit Prices as defined in COMAR 21.06.03.02 and .06.

1.4 Contract Duration

The Contract resulting from this IFB shall be for a period of three (3) years beginning on or about **October 1, 2012** and ending **September 30, 2015** with two (2) one year renewal options. The Contractor shall provide services upon receipt of a Notice to Proceed from the Contract Monitor.

1.5 Procurement Officer

The sole point of contact in the State for purposes of this IFB prior to the award of any Contract is the Procurement Officer at the address listed below:

Sharon R. Gambrill, CPPB
Maryland Department of Health and Mental Hygiene
Office of Procurement and Support Services
201 West Preston Street – Room 416B
Baltimore, Maryland 21201
Phone Number: 410-767-5816
Fax Number: 410-333-5958
E-mail: gambrills@dhmh.state.md.us

DHMH may change the Procurement Officer at any time by written notice.

1.6 Contract Monitor

The Contract Monitor is:

Wendell Miller, Chief
Maryland Department of Health and Mental Hygiene
Medical Care Programs - Office of Finance
201 West Preston Street, Room 219
Baltimore, MD 21201
Office Phone: (410) 767-5194
Fax Number : (410) 333-5321
Email: WMiller@dhmh.state.md.us

DHMH may change the Contract Monitor at any time by written notice.

1.7 Pre-Bid Conference

A pre-bid conference (Conference) will be held on June 29, 2012 beginning at 2:00 p.m. at 201 W. Preston Street – Lobby Room L-1. Attendance at the pre-bid conference is not mandatory, but all interested Bidders are encouraged to attend in order to facilitate better preparation of their bids.

The Pre-bid Conference will be summarized. As promptly as is feasible, subsequent to the Pre-Bid Conference, a summary of the Pre-Bid Conference and all questions and answers known at that time will be distributed to all prospective Bidders known to have received a copy of this IFB. This summary will also be posted on eMaryland Marketplace.

In order to assure adequate seating and other accommodations at the Pre-Bid Conference, please mail, e-mail, or fax the Pre-Bid Conference Response Form to the attention of the Procurement Coordinator (see sub-section 1.6) no later than June 21, 2012. The Pre-Bid Conference Response Form is included as **Attachment E** to this IFB. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please call no later than June 21, 2012. DHMH will make a reasonable effort to provide such special accommodation.

1.8 eMarylandMarketplace

Each Bidder must indicate their eMaryland Marketplace (eMM) vendor number in the Transmittal Letter (cover letter) submitted at the time of their Bid submission to this IFB.

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the DHMH web site (<http://www.dhmd.state.md.gov/procumnt/procopps.html>) and other means for transmitting the IFB and associated materials, the solicitation and summary of the pre-bid conference, Bidder questions and the Procurement Officer's responses, addenda, and other solicitation related information will be provided via eMaryland Marketplace.

In order to receive a contract award, a vendor must be registered on eMaryland Marketplace (eMM). Registration is free. Go here to register: <https://emaryland.buyspeed.com/bsa/> Click on "Register" to begin the process and follow the prompts.

1.9 Questions

Written questions from prospective Bidders will be accepted by the Procurement Officer prior to the pre-bid conference. Please questions to:

Sharon Gambrill, Procurement Officer, gambrills@dhmd.state.md.us

With Copy to:

Allegra Daye, Contract Officer, adaye@dhmd.state.md.us

Sabrina Lewis, Procurement & MBE Liaison, slewis@dhmd.state.md.us

If possible and appropriate, such questions will be answered at the pre-bid conference. (No substantive question will be answered prior to the pre-bid conference.)

Questions may be submitted by mail, facsimile, or preferably, by e-mail to the Procurement Officer and the above referenced individuals. Questions, both oral and written, will also be accepted from prospective Bidders attending the Pre-Bid Conference. If possible and appropriate, these questions will be answered at the Pre-Bid Conference.

Questions will also be accepted subsequent to the Pre-Bid Conference and should be submitted in a timely manner prior to the bid due date to the Procurement Officer. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors who are known to have received a copy of the IFB.

1.10 Bids Due (Closing) Date

The bids must be received by the Procurement Officer, at the address listed in Section 1.5, no later than **2:00 p.m. (Local Time)** on **July 11, 2012** in order to be considered.

Requests for extension of this time or date will not be granted. Bidders mailing bids should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02, bids received after the due time/date, **July 11, 2012 at 2:00 p.m. (Local Time)** will not be considered.

Bids may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set for the opening.

Bids may not be submitted by e-mail or facsimile.

1.11 Duration of Offer

Bids submitted in response to this IFB are irrevocable for 120 days following the closing date of the bids. This period may be extended at the Procurement Officer's request only with the Bidder's written agreement.

1.12 Revisions to the IFB

If it becomes necessary to revise this IFB before the due date for bids, addenda will be posted on the DHMH Current Procurements web page and through eMarylandMarketplace. Addenda made after the due date for bids will be sent only to those Bidders who submitted a timely bid.

Acknowledgment of the receipt of all addenda to this IFB issued before the bid due date must accompany the bid in the Transmittal Letter accompanying the Bid. Acknowledgement of the receipt of addenda to the IFB issued after the bid due date shall be in the manner specified in the addendum notice. Failure to acknowledge receipt of addenda does not relieve the Bidder from complying with its terms, additions, deletions or corrections.

1.13 Cancellations

The State reserves the right to cancel this IFB, accept or reject any and all bids, in whole or in part, received in response to this IFB.

1.14 Incurred Expenses

The State will not be responsible for any costs incurred by any Bidder in preparing and submitting a bid or in performing any other activities relative to this solicitation.

1.15 Protest/Disputes

Any protest or dispute related respectively to this solicitation or the resulting Contract shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

1.16 Bidder Responsibilities

The selected Bidder shall be responsible for all products and services required by this IFB. All subcontractors must be identified and a complete description of their role relative to the bid must be included in the bid. Additional information regarding MBE subcontractors is provided under paragraph 1.20 below. If a Bidder that seeks to perform or provide the services required by this IFB is subsidiary of another entity, all information submitted by the Bidder, such as but not limited to, references and financial reports, shall pertain exclusively to the Bidder, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Bidder's bid must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

1.17 Mandatory Contractual Terms

By submitting a Bid in response to this IFB, a Bidder, if selected for award, shall be deemed to have accepted the terms and conditions of this IFB and the Contract, attached herein as Attachment A. Any exceptions to this IFB or the contract must be raised prior to bid submission. **Changes to the solicitation or contract made by the Bidder may result in bid rejection.**

1.18 Bid/Bid Affidavit

A bid submitted by a Bidder must be accompanied by a completed Bid/Bid Affidavit. A copy of this Affidavit is included as Attachment B of this IFB.

1.19 Contract Affidavit

All Bidders are advised that if a Contract is awarded as a result of this solicitation, the successful Bidder will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as Attachment C of this IFB. This Affidavit must be provided within five business days of notification of proposed Contract award, however, to expedite processing, we suggest that this document be completed and submitted with the Bid.

1.20 Minority Business Enterprises

A minimum overall MBE subcontractor participation goal of **25%** has been established for the services resulting from this contract.

1.20.1 Attachment D – Minority Business Enterprise Participation, Instructions and Forms are provided to assist Bidders. A bidder must include with its bid a completed *Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D1)* whereby:

- (a) The bidder acknowledges the certified MBE participation goal or requests a waiver, commits to make a good faith effort to achieve the goal, and affirms that MBE subcontractors were treated fairly in the solicitation process.
- (b) The bidder responds to the expected degree of Minority Business Enterprise participation as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of submission. The bidder shall specify the percentage of contract value associated with each MBE subcontractor identified on the MBE Participation Schedule.

If a bidder fails to submit Attachment D1 with the bid as required, the Procurement Officer shall deem the bid non-responsive when considering the next lowest bid.

1.20.2 Bidders are responsible for verifying that the MBE(s) selected to meet the subcontracting requirement and subsequently identified in Attachment D-1 is appropriately certified and has the correct NAICS codes allowing it to perform the intended work. The MDOT MBE Directory may be found on the Web at: <http://mbe.mdota.state.md.us/directory/>. See 1.20.5 below.

1.20.3 If the apparent awardee believes a waiver (in whole or in part) of the overall MBE goal, or any sub goal, is necessary, it must submit a fully documented waiver request that complies with COMAR 21.11.03.11 either with the Bid or at the latest, within 10 days from notification that it is the apparent awardee.

1.20.4 Within 10 working days from notification that it is the apparent awardee or from the date of the actual award, whichever is earlier, the bidder must provide the following documentation to the Contract Monitor.

- (a) Outreach Efforts Compliance Statement (Attachment D2)
- (b) Subcontractor Project Participation Statement (Attachment D3)
- (c) Any other documentation required by the Procurement Officer to ascertain bidder or Bidder responsibility in connection with the certified MBE participation goal.

If the apparent awardee fails to return each completed document within the required time, the Procurement Officer may determine that the apparent awardee is not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

- 1.20.5 A current directory of certified Minority Business Enterprises is available through the Maryland State Department of Transportation, Office of Minority Business Enterprise, 7201 Corporate Center Drive, P.O. Box 548, Hanover, Maryland 21076. The phone numbers are 410-865-1269, 1-800-544-6056 or TTY 410-865-1342. The directory is also available at <http://www.mdot.state.md.us>. The most current and up-to-date information on Minority Business Enterprises is available via this website.
- 1.20.6 The Contractor once awarded a contract will be responsible for submitting, or requesting, its subcontractor(s) to submit the following forms to provide the State with ongoing monitoring of MBE Participation:
- (a) D-4 (MBE Participation Prime Contractor Paid/Unpaid MBE Invoice Report)
 - (b) D-5 (MBE Participation Subcontractor Paid/Unpaid MBE Invoice Report)

1.21 Arrearages

By submitting a response to this solicitation, each Bidder represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the Contract if selected for Contract award.

1.22 Procurement Method

This Contract will be awarded in accordance with the Competitive Sealed Bidding method at COMAR 21.05.02.

1.23 Verification of Registration and Tax Payment

Before a corporation can do business in the State it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. It is strongly recommended that any potential Bidder complete registration prior to the due date for receipt of bids. A Bidder's failure to complete registration with the Department of Assessments and Taxation may disqualify an otherwise successful Bidder from final consideration and recommendation for Contract award.

1.24 False Statements

Bidders are advised that the Maryland Code Annotated, State Finance and Procurement Article, § 11-205.1 provides as follows:

- 1.24.1 In connection with a procurement contract a person may not willfully:
- (a) Falsify, conceal, or suppress a material fact by any scheme or device;
 - (b) Make a false or fraudulent statement or representation of a material fact; or
 - (c) Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- 1.24.2 A person may not aid or conspire with another person to commit an act under subsection (1) of this section.

- 1.24.3 A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five years or both.

1.25 Payments by Electronic Funds Transfer

By submitting a response to this solicitation, the Bidder agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. Payment by electronic funds transfer is mandatory for contracts exceeding \$100,000. The selected Bidder shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption. The COT/GAD X-10 form in PDF format may be downloaded off the Comptroller's Office Web site at: http://compnet.comp.state.md.us/General_Accounting_Division/Static_Files/gadx-10.pdf.

1.26 Prompt Payment Policy

This procurement and the contracts to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3 and Code of Maryland Regulations (COMAR) 21.01.01.03 and 21.11.03.01 et seq., the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The successful Bidder must comply with the prompt payment requirements as

outlined in sub-section 31 of the contract resulting from this solicitation (see Attachment A). Additional information is available on the GOMA website at:

http://www.mdminoritybusiness.com/documents/PROMPTPAYMENTFAQs_000.pdf

1.27 Living Wage Requirements

A solicitation for services under a State Contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement Article, Annotated Code of Maryland (SFP). Additional information regarding the State's living wage requirement is contained in **Attachment G**. If a Bidder fails to complete and submit the required documentation, the State may determine a Bidder to be not responsible under State law.

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to SFP §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

The Contract resulting from this solicitation will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Bidder must identify in its Bid the location(s) from which services will be provided.

- If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
- If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.

If the Contractor provides more than 50% of the services from an out-of-State location, then the Contract will be deemed to be a Tier 1 contract. The Bidder must identify in its Bid the location(s) from which 50% or more of the Contract services will be provided.

Information pertaining to reporting obligations may be found by going to the DLLR Website <http://www.dllr.state.md.us/> and clicking on Living Wage.

1.28 Federal Funding Acknowledgement

- 1.28.1 There ☐ are / ☒ are not programmatic conditions that apply to this contract, regardless of the type of funding.
- 1.28.2 The total amount of Federal funds allocated for the Maryland Department of Health and Mental Hygiene, Medical Care Provider Reimbursements is **\$1,882,558** in Maryland State fiscal year **2012** . This represents **50%** of all funds budgeted for the unit in that fiscal year. This does not necessarily represent the amount of funding available for any particular grant, contract, or Invitation for Bid.
- 1.28.3 This contract ☒ does / ☐ does not contain federal funds. If contained, the source of these federal funds is: **The Medical Assistance Program**. The CFDA number is: **93.778**. The conditions that apply to all federal funds awarded by the Department are contained in Federal Funds **Attachment I**.

1.29 Conflict of Interest Affidavit and Disclosure

All Bidders are advised that if a Contract is awarded as a result of this solicitation, the successful Contractor's personnel and each of the participating subcontractor personnel shall be required to complete agreements such as **Attachment H** Conflict of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

1.30 Non-Disclosure Agreement

All Bidders are advised that this solicitation and any resultant Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as **Attachment J**. Bidders shall complete and sign the NDA (Attachment I) and submit it with their Bid.

1.31 Electronic Procurements Authorized

- A Under COMAR 21.03.05, unless otherwise prohibited by law, the Department of Health & Mental Hygiene (DHMH) may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in the Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21, Annotated Code of Maryland.
- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the bidder to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the IFB or the Contract.

- C. "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, electronic mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g. eMarylandMarketplace.com), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this IFB (e.g. §1.30 related to EFT) and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
1. The Procurement Officer may conduct the procurement using eMarylandMarketplace, e-mail or facsimile to issue:
 - (a) the solicitation (e.g. the IFB);
 - (b) any amendments;
 - (c) pre-bid conference documents;
 - (d) questions and responses;
 - (e) communications regarding the solicitation or bids to any Bidder or potential Bidder including requests for clarification, explanation, or removal of elements of an Bidder's bid deemed not acceptable;
 - (f) notices of award selection or non-selection; and
 - (g) the Procurement Officer's decision on any protest or Contract claim.
 2. An Bidder or potential Bidder may use e-mail or facsimile to:
 - (a) ask questions regarding the solicitation;
 - (b) reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
 - (c) request a debriefing; or,
 - (d) submit a "No Bid Response" to the solicitation.
 3. The Procurement Officer, the State's Contract Monitor and the Contractor may conduct day-to-day Contract administration, except as outlined in section 5 of this subsection utilizing e-mail, facsimile or other electronic means if authorized by the Procurement Officer or Contract Monitor.
- E. The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:
1. submission of initial bids or bids;
 2. filing of protests;
 3. filing of Contract claims;
 4. submission of documents determined by DBM to require original signatures (e.g. Contract execution, Contract modifications, etc); or
 5. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or, Bidder be provided in writing or hard copy.
- F. Any facsimile or electronic mail transmission is only authorized to the facsimile numbers or electronic mail addresses for the identified person as provided in the IFB, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

SECTION 2 – SCOPE OF WORK

2.1 Purpose

- 2.1.1 The Office of Finance, Medical Care Programs of the Department of Health and Mental Hygiene of the State of Maryland, is soliciting bids from qualified firms to:
- A. Perform Limited Appraisals services to determine the appraised values for nursing homes (providers) that participate in the Program and provide a Summary Appraisal Report.
 - B. Appraise the value of the building, improvements to real property, and non-movable equipment of each nursing home at least once every three (3) years using a “segregated cost” approach to determine reconstruction cost minus any physical deterioration and functional obsolescence as estimated through the “breakdown” method.
 - C. Appraise the value of the land of each nursing home at least every three (3) years using a sales comparison approach considering its highest valued use as a nursing home.

The appraisals may not include any value (startup costs) associated with the Certificate of Need for nursing home beds.

(see definitions or mhcc.maryland.gov/certificateofneed/overview.html)

2.1.2 Background

On January 1, 1983, the State of Maryland implemented a new nursing home reimbursement system. Under the system, reimbursement for capital expense is based on the current appraised value of the facility. The applicable section of the Code of Maryland Regulations is COMAR 10.09.10.10. In accordance with established program procedures, appraisals will be performed at least once every three years on nursing homes participating in the Maryland Medical Assistance Program (the “Program”). As of June 30, 2011 there were about 250 facilities participating in the Program. Approximately one-third of these facilities must be re-appraised by June 30th of each year of the contract. In addition, approximately **ten (10)** new facility appraisals and facility improvement appraisals are required per year. During the previous contract, **208** appraisals of nursing home facilities were performed throughout the State over a period of three (3) years.

Information applicable to these providers is in Exhibit 1.

2.2 Bidder Minimum Qualifications

Bidders must prove that the following minimum qualifications have been met. The Bidder should include with their bid response a copy of their Maryland Certified General Real Estate Appraiser certificate.

- 2.2.1 The Bidder shall be a Maryland Certified General Real Estate Appraiser who is licensed to provide real estate appraisal services in connection with all types of real property without regard to value, complexity or whether the property is residential or commercial.
- 2.2.2 The Bidder must have at least three (3) years of experience in the past 5 years in the appraising of commercial properties.

- 2.2.3 Each vendor bidding as an individual must provide with his/her bid a copy of his or her professional license, a resume, and a list of three references that can be contacted to verify the professional competency, good character, general reliability of the bidder and that all mandatory qualifications/requirements are met.
- 2.2.4 Each vendor submitting a bid as a vendor employing individuals must provide a certificate of insurance coverage and references indicating the capability, reliability, and integrity of the bidder. In addition, such a bidder must submit resumes for any known individuals that it will provide to work under the resulting contract, and letters of intent from such individuals acknowledging their existing or proposed employment or other approved relationship with the bidder (partnership, sub-contractor, etc.), and their further intent to provide services to the Center as required under this solicitation.

2.3 Scope of Work – Requirements

2.3.1 A. General Requirements:

All appraisal services shall be performed for nursing homes who participate in the Program, as set forth in this IFB.

1. The Contractor shall have a local office within the State of Maryland. The local office must have sufficient space to permit up to four Departmental officials to hold frequent and unscheduled visits or meetings to review appraisal documents as needed. In addition, the Contractor shall make this office available on 1- 2 day's notice from the Department's Contract Monitor to meet to discuss appeal concerns and nursing home providers that may protest the accuracy of the appraisal and be able to provide documents related to the appraisals that are being contested. The Contractor shall provide the option of teleconferencing if representatives from the Department, the nursing home provider, or the Contractor cannot be present when there is a meeting. The Contractor's system shall allow for multiple parties be on a conference line when a meeting is held at their local office.
2. The Contractor shall schedule and perform appraisals assigned by the Department and in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP) for generally accepted practices, format, and data elements, and the applicable regulations and transmittals (COMAR 10.09.10.10) for nursing homes.
3. The Contractor must maintain all data, material, and working papers in an organized manner in a location with convenient access to the Department for a period of at least five (5) years after preparation or at least two (2) years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires later.
4. All data, materials, and working papers developed under this contract are the property of the State of Maryland.
5. The Contractor shall be available beyond the termination of this contract for the Defense of any protest or appeals relating to the appraisals performed during the contract period as described in Section 2-Scope of Work, 2.3.1(C) Scope of Work-Appraisal Protest and Appeals #1. The Bidder's bid shall include a written statement agreeing to be available. In the event services related to the defense of any protest or appeals are required after the expiration of the contract term, the parties shall enter into a separate agreement related to those services.

6. The Contractor shall be independent from the State Medicaid Agency and from any provider that is potentially subject to an appraisal. The Contractor shall not at any time during the duration of this contract have a personal business relationship with any facility or provider affected by the contract resulting from this IFB that, in the sole judgment of the Department, impairs this independent relationship. The Conflict of Interest Affidavit and Disclosure (Attachment H) shall be included with the Bidder's bid.
7. The Contractor shall respond to questions from the Department's Contract Monitor within two (2) working days from the date of the telephone call or from the date of the receipt of an e-mail or other correspondence.

B. Appraisal Process

1. There are approximately two-hundred fifty (250) existing nursing homes and it is anticipated that over the three-year contract term there will be an additional ten (10) new provider/facility improvement appraisals for an estimated total of two-hundred and sixty (260) required appraisals. The Contractor shall perform a minimum of six (6) appraisals per month from a list of nursing home facilities assigned by the Department. The due date for the appraisals listed will be specified in (Section 2-Scope of Work, 2.2.1(B) Scope of Work-Appraisal Process (5-7)). If the Contractor fails to meet the minimum monthly requirement, the Contractor shall submit a written waiver request no later than five (5) working days prior to the end of each month. An example of a waiver request is set forth in Exhibit 3. The granting of the waiver request is subject to the approval of the Department.
2. The Contractor shall verify the accuracy of all information obtained through the examination of records and other supporting evidence, in order to prepare an authoritative, objective report as listed in section 2.1.1.B:
3. The Contractor shall submit to the Department a minimum of six (6) appraisal reports monthly in a format approved by the Department. Each report shall include the Contractor's findings with any other supporting data. The Contractor shall also submit to the Department all details and the basis of its findings or data collections. One (1) original and two (2) true copies of the appraisal document will be delivered to the Department within the time parameters in 5-7 below. (See USPAP and COMAR 10.09.10.10 for format and data elements).
4. In consultation with the Department, the Contractor shall develop customized appraisal reports that may be needed for a specific purpose by the Department.
5. The Contractor shall submit any appraisals on new facilities to the Department within 90 days from the date requested by the Department. New appraisals will not be included in the annual appraisal assignments listed in Exhibit 1). Facility improvement appraisals will not be included in the annual reappraisals assignments listed in Exhibit 1.
6. The Contractor shall submit reappraisals to the Department no later than June 30th of the State's fiscal year (July 1st –June 30th) in which the reappraisals are assigned by the Department.
7. Timely completion of appraisals in accordance with the assigned list is of the essence in this contract. Failing to submit appraisals in accordance with the assigned list (and

without an approved waiver request), the Contractor may be required to submit to the Contract Monitor for approval, a remediation plan detailing Contractor's corrective measures for ensuring proper and timely completion of appraisals as assigned. Failure to submit timely appraisals or failure to submit and successfully implement an approved remediation plan as required may result in the withholding of funds from the Contractor. Continued failure to provide timely appraisals and to correct late submission issues shall be considered a material breach of this contract and, among other remedies available to it, at law or in equity, the Department may exercise its right to terminate the contract for default.

C. Scope of Work – Appraisal Protest and Appeals

1. The Contractor shall assist the Department with administrative or civil litigation arising under the contract that relates to the Contractor's appraisals, including but not limited to, appearing in court and/or hearings, providing written documents and providing witnesses. Although the actual number of protest cannot be predicted, it is estimated based upon historical figures that approximately 5% of appraisals are protested within 90 days of providers receiving the completed appraisals. It is estimated that 5% of the appraisals protested will result in appeals that are scheduled for hearings before the Office of Administrative Hearings presently located in the Administrative Law Building, 11101 Gilroy Road, Hunt Valley, Maryland 21031-1301. The Contractor shall be available beyond the termination of this contract for the defense of any protest or appeal relating to the appraisals performed under this contract. (See Section 2, Scope of Work, 2.3.1A (6). **The Contractor shall provide continuous representation is available in cases of illness, vacations, etc.**
2. The Contractor must respond in writing, within thirty (30) days, to the Department's letter informing the Contractor when a provider is protesting the results of the appraisal. The letter will be sent by certified mail. The Contractor must acknowledge receipt of the Department's letter, and indicate in their response to the Department when they would like to meet with the Department and the provider to discuss the concerns about the appraisal.

D. Deliverables and Key Performance Indicators

1. Monthly – The Contractor shall submit the minimum six (6) appraisals required from a list of appraisals assigned by the Department in a form acceptable to the Department (Section 2.3 Scope of Work-Requirements, 2.3.1(B) Scope of Work-Appraisal Process #3)
2. Monthly – The Contractor shall submit a status report of a list of items that are returned to the Contractor for corrections pertaining to the appraisals.
3. When necessary as determined by the Department – The Contractor shall attend meetings to discuss the status of the contracted work and other pertinent items. The Contractor shall prepare meeting minutes and distribute them to the Department in a timely manner, not to exceed ten (10) working days after the meeting. Section 2.3 Scope of Work-Requirements, 2.3.1(A) Scope of Work - General Requirements #4.
4. Any appraisals returned to the Contractor because of errors or deficiencies will not be paid, or the cost of a single appraisal shall be withheld from future payments, until the Contractor corrects the errors. The Contractor must return to the Department the corrected appraisal within 30 days from receipt of the appraisal that has the error or deficiencies.

2.4 Security Requirements

2.4.1 Employee Identification

- (a) Each person who is an employee or agent of the Contractor or subcontractor shall display his or her company ID badge at all times while on State premises. Upon request of authorized State personnel, each such employee or agent shall provide additional photo identification.
- (b) At all times at any facility, the Contractor's personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badge issuance, and wearing the badge in a visual location at all times.

2.4.2 Information Technology

- (a) Contractors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Contractor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available on-line at: www.doit.maryland.gov – keyword: Security Policy.
- (b) The Contractor shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State. The contractor shall fill-out any necessary paperwork as directed and coordinated with the CM to obtain approval by the State to connect Contractor-owned equipment to a State LAN/WAN.

2.4.3 Criminal Background Check

The Contractor shall obtain from each prospective employee a signed statement permitting a criminal background check. The Contractor shall secure at its own expense a Maryland State Police and/or FBI background check and shall provide the Department's Contract Monitor with complete checks on all new employees prior to assignment. The Contractor may not hire an employee with criminal record unless prior written approval is obtained from the Department.

2.5 MBE Reports

2.5.1 In the event that there is an MBE Goal, the Contractor and its MBE subcontractors shall provide the following MBE Monthly Reports:

- a. MBE Report D-4, the Contractor's Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer
- b. MBE Report D-5, the MBE Subcontractor's Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer.

2.6 Payment Type

2.6.1 Payments

1. Payment will be made subject to any adjustment to the invoiced amount based upon the following:
 - a. The price per appraisal as set forth on the Bid Page for the relevant contract term;
 - b. The number of completed appraisals submitted to and approved by the Department; and
 - c. Whether the Contractor has performed satisfactorily and is in compliance with contract terms.

2. The Contractor's invoice(s) must be submitted to the Department's Contract Monitor on a monthly basis, by the first week of each month.
- 2.6.2 Contractor shall have a process for resolving billing errors.
- 2.6.3 Payments will be made as lump sum or progress payments as set forth herein. In no case will any payment be viewed as a partial payment.
- 2.6.4 Funds for any contract(s) resulting from this IFB are dependent upon appropriations from the Maryland General Assembly.
- 2.6.5 The Department reserves the right to reduce or withhold contract payment (see terms set forth in this Section above) in the event the contractor does not provide the Department with all required deliverables within the time frame specified in the contract or in the event that the Contractor otherwise materially breaches the terms and conditions of the contract until such time as the contractor brings itself into full compliance with the contract. Any action on the part of the Department, or dispute of action by the contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article, §§15-215 - 15-223 and with COMAR 21.10.02.

2.7 Invoicing

- 2.7.1 The Contractor's invoice(s) must be submitted to the Department's Contract Monitor on a monthly basis, by the first week of each month.

Invoices shall include:

- Contractor's name and telephone number;
- Remittance address;
- Federal taxpayer identification (or if owned by an individual his/her social security number) and the State's assigned contract control number and ADPICS number;
- Identification of each property appraised and the date of the appraisal;
- The price per appraisal as set forth on the Financial Page for the relevant contract term;
- Invoice number;
- The total amount invoiced for the month.

Invoices submitted without the required information will not be processed for payment until the Contractor provides the required information. (see Exhibit 2 for a sample of invoice to be submitted).

2.8 Insurance Requirements

- 2.8.1 The Contractor shall maintain Commercial General Liability Insurance with limits sufficient to cover losses resulting from or arising out of Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees or subcontractors, but no less than a Combined Single Limit for Bodily Injury, Property Damage and Personal and Advertising Injury Liability of \$1,000,000 per occurrence and \$3,000,000 aggregate.
- 2.8.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$3,000,000 per occurrence.
- 2.8.3 The Contractor shall maintain Automobile and/or Commercial Truck Insurance as appropriate with Liability, Collision and PIP limits no less than those required by the State where the vehicle(s) is registered but in no case less than those required by the State of Maryland.

- 2.8.4 The Contractor shall maintain Employee Theft Insurance with minimum limits of \$1,000,000 per occurrence.
- 2.8.5 Upon execution of a Contract with the State, Contractor shall provide the Contract Monitor with current certificates of insurance, and shall update such certificates from time to time, as directed by the Contract Monitor. Such copy of the Contractor's current certificate of insurance shall contain at minimum the following:
- a. Worker's Compensation - The Contractor shall maintain such insurance as necessary and/or as required under Worker's Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
 - b. Commercial General Liability as required in subsection 2.6.1.
 - c. Errors and Omissions/Professional Liability as required in sub-part 2.6.2.
 - d. Automobile and/or Commercial Truck Insurance as required in sub-part 2.6.3.
 - e. Employee Theft Insurance as required in sub-part 2.6.4.
- 2.8.6 The State shall be named as an additional named insured on the policies with the exception of Worker's Compensation Insurance. Certificates of insurance evidencing coverage shall be provided prior to the commencement of any activities in the Contract. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Monitor, by certified mail, not less than 60 days advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, the Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least 30 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.
- 2.8.7 The Contractor shall require that any subcontractors obtain and maintain similar levels of insurance and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

2.9 Problem Escalation Procedure

- 2.9.1 The Contractor must provide and maintain a Problem Escalation Procedure for both routine and emergency situations. This Procedure must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.
- The Contractor shall provide contact information to the Contract Monitor as well as other personnel should the Contract Monitor not be available.
- 2.9.2 The Contractor must provide a Problem Escalation Procedure no less than 10 days prior to the beginning of the contract, and within 10 days after the start of each contract year (and

within 10 days after any change in circumstance which changes the Procedure). The Problem Escalation Procedure shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Details shall include:

- The process for establishing the existence of a problem,
- The maximum duration that a problem may remain unresolved at each level before automatically escalating to a higher level for resolution,
- Circumstances in which the escalation will occur in less than the normal timeframe,
- The nature of feedback on resolution progress, including the frequency of feedback,
- Identification of and contact information for progressively higher levels that would become involved in resolving a problem,
- Contact information for persons responsible for resolving issues after normal business hours (*i.e.*, evenings, weekends, holidays, etc.) and on an emergency basis, and
- A process for updating and notifying the Contract Monitor of any changes to the Problem Escalation Procedure.

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SECTION 3 – BID FORMAT

3.1 One Part Submission

Bidders shall submit bids, all minimum qualification documentation and all Additional Required Submissions (see 3.4 of this Section) in a single sealed envelope.

3.2 Labeling

Each Bidder is required to label the sealed bid. The bid shall bear the IFB title and number, name and address of the Bidder and closing date and time for receipt of the bids.

3.3 Bid Completion

The Bid shall contain all price information in the format specified on the Bid Page (Attachment F). Complete the price sheets only as provided in the Bid Instructions. Do not amend, alter or leave blank any items on the Bid Page. If option years are included, Bidders must submit Bids for each option year. Failure to adhere to any of these instructions may result in the Bid being determined non-responsive and rejected by the Department.

3.4 Additional Required Submissions

3.4.1 Transmittal Letter

A transmittal letter shall accompany the Bid. The purpose of this letter is to transmit the bid and acknowledge the receipt of any addenda. The transmittal letter should be brief and signed by an individual who is authorized to commit the Bidder to the services and requirements as stated in this IFB. See Bidder's responsibilities in Section 1.16

3.4.2 Completed Bid Page (Attachment F) Submit three copies with original signatures.

3.4.3 Completed Bid/Bid Affidavit (Attachment B) Submit three copies with original signatures.

3.4.4 Completed Contract Affidavit (Attachment C) Submit three copies with original signatures.

3.4.5 Other Attachments: Submit three copies with original signatures.

- (a) Completed Maryland Living Wage Requirements Affidavit (Attachment G-1)
- (b) Conflict of Interest Affidavit (Attachment H)
- (c) Completed Federal Funds Forms (Attachment I)
- (e) Non-Disclosure Agreement (Attachment J)

3.4.6 Other Required Documentation

3.4.6.1 References

- (a) Bidder/Principal Appraiser shall provide the name, telephone numbers and email addresses of at least three (3) commercial businesses for which you provided appraisal services within the last seven (7) years.

The Department reserves the right to contact and consider references obtained through other means.

- (b) As part of its bid, each Bidder is to provide a list of all contracts with any entity of the State of Maryland that it is currently performing or which have been completed within the last 5 years. For each identified contract, the Bidder is to provide:
- i. The State contracting entity
 - ii. A brief description of the services/goods provided
 - iii. The dollar value of the contract
 - iv. The term of the contract
 - v. The State employee contact person (name, title, telephone number and if possible e-mail address)
 - vi. Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the bidder's level of performance on State contracts will be considered as part of the responsibility determination by the Procurement Officer.

3.4.6.2 Financial Capability Statements

The Bidder shall include Financial Statements, specifically, an abbreviated Profit and Loss (P&L) and an abbreviated Balance sheet for the last two years (independently audited preferred).

3.4.6.3 Certificate of Insurance

The Bidder shall provide a copy of the Bidder's current certificate of insurance with the prescribed limits set forth in Section 2.8.

3.4.6.4 Legal Action Summary – Describe:

- (a) Any outstanding legal actions or potential claims against the Bidder;
- (b) Any settled or closed legal actions or claims against the Bidder over the past five years;
- (c) Any judgments against the Bidder within the past five years, including the case name, number, court and final ruling or determination from the court, and;
- (d) The judge and court location in instances where litigation is ongoing and the Bidder has been directed by the court not to disclose information.

3.4.6.5 Availability beyond the Expiration of the Contract Term:

The Bidder shall state in writing that it will be available beyond the expiration of the contract to provide any required services related to the defense of any protest or appeals ., The Contractor and Department shall enter into a separate agreement related to those services.

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SECTION 4 - ATTACHMENTS

ATTACHMENT A – CONTRACT

This is the contract used by DHMH. It is provided with the IFB for informational purposes only and is not required at bid submission time. Only the successful Bidder will be sent a fully completed contract for the selected Bidder's signature.

ATTACHMENT B – BID/PROPOSAL AFFIDAVIT

This document must be completed and submitted with the Bidder's Bid.

ATTACHMENT C – CONTRACT AFFIDAVIT

This document is not required at time of Bid submission but is requested with Bid to expedite processing. If not received with Bid, the successful Bidder has five working days to submit Affidavit to the Procurement Officer upon notification of "Apparent Winner" status.

ATTACHMENT D – MINORITY BUSINESS ENTERPRISE (MBE) GOAL AND FORMS

This attachment includes the subcontracting goal statement, instructions and MBE forms D-1 through D-6. Form D-1 must be completed and submitted with the Bidder's Bid or Bid will be deemed non-responsive and rejected. Forms D-2 & D-3 are required within 10 days of receiving notification of recommendation for award.

ATTACHMENT E – PRE-BID CONFERENCE RESPONSE FORM

It is requested that this form be completed and submitted as described in IFB section 1.7 by those potential Bidders who plan on attending the conference.

ATTACHMENT F – BID PRICING INSTRUCTIONS AND BID PAGE

Bid forms must be completed and submitted with the Bid.

ATTACHMENT G – LIVING WAGE REQUIREMENTS FOR SERVICES CONTRACTS

ATTACHMENT G-1 -- MARYLAND LIVING WAGE REQUIREMENTS AND LIVING WAGE AFFIDAVIT

This document must be completed and submitted with the Bidder's Bid.

ATTACHMENT H – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

This document must be completed and submitted with the Bidder's Bid.

ATTACHMENT I – FEDERAL FUNDING FORMS

This document must be completed and submitted with the Bidder's Bid.

ATTACHMENT J – NON-DISCLOSURE AGREEMENT

This document must be completed and submitted with the Bidder's Bid.

ATTACHMENT A – CONTRACT

APPRAISAL SERVICES FOR NURSING HOMES REIMBURSED by the MARYLAND MEDICAID PROGRAM

THIS CONTRACT (the “Contract”) is made this (day) day of (month), (year) by and between (contractor's name) and the STATE OF MARYLAND, acting through the DEPARTMENT OF HEALTH AND MENTAL HYGIENE, OFFICE OF PROCUREMENT AND SUPPORT SERVICES.

In consideration of the promises and the covenants herein contained, the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 “Bid” means the Contractor’s Bid dated (date on bid).
- 1.2 “Contract Monitor” means the Department employee identified in the Key Information Summary Sheet as the Contract Monitor.
- 1.3 “Contractor” means (contractor's name) whose principal business address is (contractor's main address) and whose principal office in Maryland is (contractor's local address).
- 1.4 “Department” means the Maryland Department of Health and Mental Hygiene.
- 1.5 “IFB” means the Invitation for Bids for Appraisal Services for Nursing Homes Reimbursed by the Maryland Medicaid Program Solicitation # DHMH OPASS 12-10923, and any addenda thereto issued in writing by the State.
- 1.6 “Procurement Officer” means the Department employee identified in the Key Information Summary Sheet as the Procurement Officer.
- 1.7 “State” means the State of Maryland.

2. Scope of Work

- 2.1 The Contractor shall provide all deliverables as defined in the IFB Section 2.3. These services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached hereto and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The IFB

Exhibit B – The Bid

Exhibit C – State Contract Affidavit, executed by the Contractor and dated _____

- 2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the IFB. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in

the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

- 2.3 Modifications to this Contract may be made provided (a) the modifications are made in writing; (b) all parties sign the modifications; and (c) approval by the required agencies, as described in COMAR, Title 21, is obtained.

3. Period of Performance.

- 3.1 The Contract resulting from this IFB shall be for a period of three (3) year beginning **October 1, 2012**, and ending **September 30, 2015**. The Contractor shall begin provision of services upon receipt of notification of award.
- 3.2 Further, this contract may be extended for three (3) periods of one year each at the sole discretion of the Department and at the prices quoted in the Bid for Option Years.

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted on the Bid Page (Attachment D). Unless properly modified (see above sub-section 2.3), payment to the Contractor pursuant to this Contract shall not exceed \$_____.
- 4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Department of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification Number which is _____. Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, § 15-104 are prohibited. Invoices shall be submitted to the Contract Monitor see Key Information Summary Sheet. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.
- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Contractor's eMarylandMarketplace vendor ID number is _____.

5. Rights to Records

- 5.1 The Contractor agrees that all documents and materials including but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor, for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be “works made for hire” as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

6. Exclusive Use

The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

7. Patents, Copyrights, Intellectual Property

- 7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.
- 7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a court finally awards, provided the State (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.
- 7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: a) procure for the State the right to continue using the applicable item, b) replace the product with a non-infringing product substantially complying with the item's specifications, or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

8. Public Information

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute

confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party, (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information or (e) which such party is required to disclose by law.

- 8.2 Bidders should give specific attention to the identification of those portions of their bids that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, Md. Code Ann., State Government Article, Title 10, Subtitle 6.

9. Loss of Data

In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms and/or applications with which the Contractor is working hereunder.

10. Indemnification

- 10.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.
- 10.2 The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 10.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 10.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

11. Non-Hiring of Employees

No official or employee of the State, as defined under Md. Code Ann., State Government Article, § 15-102, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

12. Disputes

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

13. Maryland Law

13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

13.2 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

15. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

16. Non-availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

17. Termination for Cause

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

18. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 (A)(2).

19. Delays and Extensions of Time

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

20. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

21. Pre-Existing Regulations

In accordance with the provisions of Md. Code Ann., State Finance and Procurement Article, §11-206, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

22. Financial Disclosure

The Contractor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, § 13-221, which requires that every person that enters into contracts, leases, or other agreements with the State

or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

23. Political Contribution Disclosure

The Contractor shall comply with Md. Code Ann., Election Law Article, §§14-101 - 14-108, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall, file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract,

then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

24. Documents Retention and Inspection Clause

The Contractor and sub-contractors shall retain and maintain all records and documents relating to this contract for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the procurement officer or designee, at all reasonable times.

If the Contractor supplies services to a State residential health care facility under the Mental Hygiene Administration, the Family Health Administration, the Alcohol and Drug Abuse Administration, or the Developmental Disabilities Administration, the Contractor agrees, in addition to the requirements above,:

- 24.1. That pursuant to 42 Code of Federal Regulations (C.F.R.) Part 420, the Secretary of Health and Human Services, and the Comptroller General of the United States, or their duly authorized representatives, shall be granted access to the Contractor's contract, books, documents and records necessary to verify the cost of the services provided under this contract, until the expiration of four years after the services are furnished under this contract; and
- 24.2. That similar access will be allowed to the books, documents and records of any organization related to the Contractor or controlled by the Contractor (as those terms are defined in 42 C.F.R. (420.301) if that organization is sub-contracting to provide services with a value of \$10,000 or more in a twelve-month period to be reimbursed through funds provided by this contract.

25. Compliance with Laws

The Contractor hereby represents and warrants that:

- 25.1. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- 25.2. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- 25.3. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,

25.4. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

26. Cost and Price Certification

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its bid or offer.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its bid or offer, was inaccurate, incomplete, or not current.

27. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Department's Contract Manager, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Department's Contract Monitor. Any subcontracts shall include such language as may be required in various clauses contained within this solicitation and attachments. The contract shall not be assigned until all approvals, documents and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

28. Liability

28.1 For breach of this Contract, negligence, misrepresentation or any other contract or tort claim, Contractor shall be liable as follows:

- (a) For infringement of patents, copyrights, trademarks, service marks and/or trade secrets, as provided in Section 7 of this Contract;
- (b) Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property;
- (c) For all other claims, damages, losses, costs, expenses, suits or actions in any way related to this Contract, regardless of the form, Contractor's liability shall be limited to three (3) times the total dollar amount of the Contract value up to the date of settlement or final award of any such claim. Third party claims arising under Section 10, "Indemnification", of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

29. Parent Company Guarantee (If Applicable)

[Corporate name of Parent Company] hereby guarantees absolutely the full, prompt and complete performance by "[Contractor name]" of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations and liabilities. "[Corporate name of Parent Company]" may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. "[Corporate name of Parent Company]" further agrees that if the State brings any claim, action, suit or proceeding against "[Contractor]", "[Corporate name of Parent Company]" may be named as a party, in its capacity as Absolute Guarantor.

30. Commercial Non-Discrimination

- 30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.
- 30.3 As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

31. Prompt Pay Requirements

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
- (a) Not process further payments to the contractor until payment to the subcontractor is verified;
 - (b) Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
 - (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
 - (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - (e) Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation:
- (a) Retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and
 - (b) An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:
- (a) Affect the rights of the contracting parties under any other provision of law;
 - (b) Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or
 - (c) Result in liability against or prejudice the rights of the Department.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
 - (b) This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.
 - iv. Verification shall include a review of:
 - a. The Contractor's monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
 - b. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
 - (c) If the Department determines that the Contractor is in noncompliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
 - (d) If the Department determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
 - i. Terminate the contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.
 - (e) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

32. Contract Monitor

The work to be accomplished under this Contract shall be performed under the direction of the Contract Monitor. All matters relating to the interpretation of this Contract shall be referred to the Contract Monitor for determination.

33. Notices

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State: Sharon R. Gambrill, CPPB
Maryland Department of Health and Mental Hygiene
OFFICE OF PROCUREMENT AND SUPPORT SERVICES
201 West Preston Street, Room 416B
Baltimore, Maryland 21201

If to the Contractor: _____

ATTACHMENT B – BID/BID AFFIDAVIT

A. AUTHORITY

I HEREBY AFFIRM THAT:

I, _____ (print name), possess the legal authority to make this Affidavit.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all bids submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or bid, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

The undersigned bidder hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, §14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a bid or bid and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority bid;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the bid or bid;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the bid or bid.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

(1) Been convicted under state or federal statute of:

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or bids for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;

(7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or bids for a public or private contract;

(8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or

(9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C and subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price bid of the bidder or Bidder or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

K. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in

this Affidavit or any contract resulting from the submission of this bid or bid shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (print name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

Revised August, 2011

ATTACHMENT C – CONTRACT AFFIDAVIT

A. AUTHORITY

I HEREBY AFFIRM THAT:

I, _____ (print name), possess the legal authority to make this Affidavit.

B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

- (1) Corporation — ☐ domestic or ☐ foreign;
- (2) Limited Liability Company — ☐ domestic or ☐ foreign;
- (3) Partnership — ☐ domestic or ☐ foreign;
- (4) Statutory Trust — ☐ domestic or ☐ foreign;
- (5) ☐ Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID Number: _____

Address: _____

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID Number: _____

Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101 — 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

(i) The dangers of drug and alcohol abuse in the workplace;

(ii) The business's policy of maintaining a drug and alcohol free workplace;

(iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs;

and

(iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;

(h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:

(i) Abide by the terms of the statement; and

(ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

(i) Take appropriate personnel action against an employee, up to and including termination; or

(ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Bid Affidavit dated _____, 20____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (printed name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

Revised August, 2011

STATE OF MARYLAND DEPARTMENT OF HEALTH AND MENTAL HYGIENE

The Contractor shall structure its procedures for the performance of the work required in this contract to attempt to achieve the Minority Business Enterprise (MBE) participation goal stated in this Invitation for Bids (IFB). MBE performance must be in accordance with this Attachment, as authorized by Minority Business Enterprise Policies set forth at COMAR 21.11.03. Accordingly, the Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this Attachment.

DEFINITIONS

As used in this Attachment, the following words have the meanings indicated.

- ◆ “Certification” means a determination made by the Maryland Department of Transportation that a legal entity is a minority business enterprise.
- ◆ “MBE Liaison” is the employee designated to administer this Department’s MBE program.
- ◆ “Minority Business Enterprise” or “MBE” means any legal entity, other than a joint venture, organized to engage in commercial transactions, that is:
 - (1) at least 51 percent owned and controlled by one or more individuals who are socially and economically disadvantaged; and
 - (2) managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

Note: A minority business enterprise also includes a not-for-profit entity organized to promote the interests of physically or mentally disabled individuals. An MBE **must** be certified by the Maryland Department of Transportation (MDOT) in order to have its contract participation counted under the Department’s MBE program.

MINORITY BUSINESS ENTERPRISE INSTRUCTIONS AND FORMS D-1 through D-5

A. MBE Participation Goals and sub-goals

The Contractor shall achieve the MBE subcontracting goal and any sub-goals established for this contract, by subcontracting to one or more MDOT-certified Minority Business Enterprises a sufficient portion of the contract’s scope of work that results in total MBE payments that meet or exceed the MBE participation goal.

If awarded the Contract:

- A prime contractor – including an MBE or certified Small Business Reserve (SBR) prime contractor – must accomplish an amount of work not less than the MBE participation goal with certified MBE subcontractors.
- A prime contractor comprising a joint venture that includes MBE partner(s) must accomplish the MBE participation goal with certified MBE subcontractors.

B. Solicitation and contract formation

1. Instructions for Submission of Bid:

a. **The bidder must include the following affidavit with its bid:**

- 1) A completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D-1) whereby the bidder acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process. Additionally, the bidder identifies the specific commitment of certified Minority Business Enterprises at the time of submission by listing each MBE subcontractor to be used on the contract and specifying the specific percentage of contract value (not range) associated with each subcontractor. **Attachment D-1 shall become part of the final contract, therefore, any changes (additions and/or deletions) must be submitted to the Procurement Officer in writing for approval.**

NOTE: The failure of a Bidder to complete and submit the MDOT Certified MBE Utilization and Fair Solicitation Affidavit shall result in a determination that the bid is non-responsive.

- 2) **Within 10 working days from notification** that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee must provide the following documentation to the Procurement Officer.
 - a) Outreach Efforts Compliance Statement (**Attachment D-2**)
 - b) Subcontractor Project Participation Statement (**Attachment D-3**)
 - c) If the apparent awardee has requested a waiver (in whole or in part) of the overall MBE goal or of any sub-goal as part of the previously submitted Attachment D-1, it must submit documentation supporting the waiver request that complies with COMAR 21.11.03.11.
 - d) Any other documentation required by the Procurement Officer to ascertain bidder or Bidder responsibility in connection with the certified MBE participation goal.

NOTE: If the apparent awardee fails to return each completed document within the required time, the Procurement Officer may determine that the apparent awardee is not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.


C. Contract Administration Requirements:

Prime Contractor shall:

1. **Attachment D-4:** Submit monthly to the Department's Contract Monitor or designee a report listing all unpaid invoices over 30 days old received from a certified MBE subcontractor working under the contract, the amount of each invoice and the reason payment has not been made. For informational purposes only, a sample prime contractor unpaid invoice report is attached.
2. **Attachment D-5:** Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit monthly to the Department's Contract Monitor or designee a report that identifies the prime contract and lists all payments received from the Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices. For informational purposes only, a sample MBE Subcontractor Paid/Unpaid Invoice report is attached.
3. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed.
4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the contract.
5. **COMAR 21.11.03.13F:** A procurement agency may, upon completion of a contract, and before final payment and/or release of retainage or both, require that a prime contractor on any contract having an MBE subcontract goal, submit a final report, in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

D. Minority Business Enterprise Participation Forms

The following forms are samples for your use in identifying and completing the MBE documentation requirements.



Attachment D1

MDOT Certified MBE Utilization and Fair Solicitation Affidavit

(submit with bid or offer)

This document **MUST BE** included with the bid or offer. If the Bidder or Bidder fails to complete and submit this form with the bid or offer as required, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

In conjunction with the bid or offer submitted in response to Solicitation No. _____, I affirm the following:

1. ☐ I acknowledge and intend to meet the overall certified Minority Business Enterprise (MBE) participation goal of ____ percent and, if specified in the solicitation, the following subgoals (complete for only those subgoals that apply):
 ____ percent African American ____ percent Asian American
 ____ percent Hispanic American ____ Woman-Owned
 Therefore, I will not be seeking a waiver pursuant to COMAR 21.11.03.11.

OR

- ☐ I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals. Within 10 business days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.11.03.11.
2. I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier.
 - (a) Outreach Efforts Compliance Statement (Attachment D2)
 - (b) Subcontractor Project Participation Certification (Attachment D3)
 - (c) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain bidder or Bidder responsibility in connection with the certified MBE participation goal.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

3. In the solicitation of subcontract quotations or offers, MBE subcontractors were provided not less than the same information and amount of time to respond as were non-MBE subcontractors.
4. Set forth below are the (i) certified MBEs I intend to use and (ii) the percentage of the total contract amount allocated to each MBE for this project and the work activity(ies) each MBE will provide under the contract. I hereby affirm that the MBE firms are only providing those work activities for which they are MDOT certified.

Prime Contractor: (Firm Name, Address, Phone)	Project Description:
Project Number:	

List Information For Each Certified MBE Subcontractor On This Project

Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	
Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	
Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	
Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	

Continue on a separate page, if needed.

SUMMARY

Total <i>African-American</i> MBE Participation:	_____ %
Total <i>Asian American</i> MBE Participation:	_____ %
Total <i>Hispanic American</i> MBE Participation:	_____ %
Total Woman-Owned MBE Participation:	_____ %
Total <i>Other</i> Participation:	_____ %
Total All MBE Participation:	_____ %

I solemnly affirm under the penalties of perjury that the contents of this Affidavit are true to the best of my knowledge, information, and belief.

Bidder/Bidder Name

(PLEASE PRINT OR TYPE)

Signature of Affiant

Name: _____

Title: _____

Date: _____

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

Outreach Efforts Compliance Statement

Complete and submit this form within 10 working days of notification of apparent award or actual award, whichever is earlier.

In conjunction with the bid or offer submitted in response to Solicitation No. _____,
Bidder/Bidder states the following:

1. Bidder/Bidder identified opportunities to subcontract in these specific work categories.
2. Attached to this form are copies of written solicitations (with bidding instructions) used to solicit MDOT certified MBEs for these subcontract opportunities.
3. Bidder/Bidder made the following attempts to contact personally the solicited MDOT certified MBEs.
4. Select ONE of the following:
 - a. ☐ This project does not involve bonding requirements.

OR

 - b. ☐ Bidder/Bidder assisted MDOT certified MBEs to fulfill or seek waiver of bonding requirements (*describe efforts*).
5. Select ONE of the following:
 - a. ☐ Bidder/Bidder did/did not attend the pre-bid/bid conference.

OR

 - b. ☐ No pre-bid/bid conference was held.

Bidder/Bidder Printed Name

By: _____
Signature

Address: _____

Subcontractor Project Participation Certification

Please complete and submit one form for each MDOT certified MBE listed on Attachment A within 10 working days of notification of apparent award.

_____ (prime contractor) has entered into a contract with _____ (subcontractor) to provide services in connection with the Solicitation described below.

Prime Contractor Address and Phone	Project Description
Project Number	Total Contract Amount \$
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Percentage of Total Contract	

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have fully complied with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a bid or bid and:

- (1) fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority business enterprise in its bid or bid;
- (2) fail to notify the certified minority business enterprise before execution of the contract of its inclusion of the bid or bid;
- (3) fail to use the certified minority business enterprise in the performance of the contract; or
- (4) pay the certified minority business enterprise solely for the use of its name in the bid or bid.

PRIME CONTRACTOR SIGNATURE

By: _____
 Name, Title
 Date

SUBCONTRACTOR SIGNATURE

By: _____
 Name, Title
 Date

This form is to be completed
monthly by the prime
contractor.

Attachment D4

Maryland Department of Health and Mental Hygiene Minority Business Enterprise Participation Prime Contractor Paid/Unpaid MBE Invoice Report

Report #: _____	Contract #: _____
Reporting Period (Month/Year): _____	Contracting Unit: _____
Report is due to the MBE Officer by the 10th of the month following the month the services were provided.	Contract Amount: _____
	MBE Subcontract Amt: _____
	Project Begin Date: _____
	Project End Date: _____
Note: Please number reports in sequence	Services Provided: _____

Prime Contractor:		Contact Person:																																		
Address:																																				
City:		State:	ZIP:																																	
Phone:	FAX:	Email:																																		
Subcontractor Name:		Contact Person:																																		
Phone:	FAX:																																			
Subcontractor Services Provided:																																				
List all payments made to MBE subcontractor named above during this reporting period: <table border="1"> <thead> <tr> <th></th> <th><u>Invoice#</u></th> <th><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> </tbody> </table>			<u>Invoice#</u>	<u>Amount</u>	1.			2.			3.			4.			List dates and amounts of any outstanding invoices: <table border="1"> <thead> <tr> <th></th> <th><u>Invoice #</u></th> <th><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Unpaid: \$</td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Unpaid: \$		_____
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3.																																				
4.																																				
Total Dollars Unpaid: \$		_____																																		
Total Dollars Paid: \$ _____																																				

**If more than one MBE subcontractor is used for this contract, you must use separate D-5 forms.

****Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

_____	Contract Monitor
_____	Contracting Unit
Department of Health and Mental Hygiene	

Minority Business Enterprise Participation Subcontractor Paid/Unpaid MBE Invoice Report

Report#: _____ Reporting Period (Month/Year): _____ Report is due by the 10th of the month following the month the services were performed.	Contract # _____ Contracting Unit: _____ MBE Subcontract Amount: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
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MBE Subcontractor Name: _____																															
MDOT Certification #: _____																															
Contact Person: _____		Email: _____																													
Address: _____																															
City: Baltimore	State: _____	ZIP: _____																													
Phone: _____	FAX: _____																														
Subcontractor Services Provided:																															
List all payments received from Prime Contractor during reporting period indicated above. <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width: 50%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="3">Total Dollars Paid: \$ _____</td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			Total Dollars Paid: \$ _____			List dates and amounts of any unpaid invoices over 30 days old. <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width: 50%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="3">Total Dollars Unpaid: \$ _____</td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			Total Dollars Unpaid: \$ _____		
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1.																															
2.																															
3.																															
Total Dollars Unpaid: \$ _____																															
Prime Contractor: _____		Contact Person: _____																													

****Return one copy of this form to the following address (electronic copy with signature & date is preferred):**

_____ Contract Monitor _____ Contracting Unit Department of Health and Mental Hygiene _____ _____ _____ _____

Signature: _____ Date: _____
(Required)

MARYLAND DEPARTMENT OF HEALTH & MENTAL HYGIENE
Code of Maryland Regulations (COMAR)
Title 21, State Procurement Regulations
(regarding a waiver to a Minority Business Enterprise subcontracting goal)

COMAR 21.11.03.11 - Waiver.

- A. If, for any reason, the apparent successful bidder or Bidder is unable to achieve the contract goal for certified MBE participation, the bidder or Bidder may request, in writing, a waiver to include the following:
- (1) A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBEs in order to increase the likelihood of achieving the stated goal;
 - (2) A detailed statement of the efforts made to contact and negotiate with certified MBEs including:
 - (a) The names, addresses, dates, and telephone numbers of certified MBEs contacted, and
 - (b) A description of the information provided to certified MBEs regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed;
 - (3) As to each certified MBE that placed a subcontract quotation or offer that the apparent successful bidder or Bidder considers not to be acceptable, a detailed statement of the reasons for this conclusion;
 - (4) A list of minority subcontractors found to be unavailable. This list should be accompanied by an MBE unavailability certification (MBE Attachment D6) signed by the minority business enterprise, or a statement from the apparent successful bidder or Bidder that the minority business refused to give the written certification: and
 - (5) The record of the apparent successful bidder or Bidder's compliance with the outreach efforts required under Regulation .09B (2)(b).
- A waiver may only be granted upon a reasonable demonstration by that MBE participation could not be obtained or could not be obtained at a reasonable price.
- If the waiver request is determined not to meet this standard, the bidder or Bidder will be found non-responsive (bid) or not reasonably susceptible for award (bid) and removed from further consideration.
- B. A waiver of a certified MBE contract goal may be granted only upon reasonable demonstration by the bidder or Bidder that certified MBE participation was unable to be obtained or was unable to be obtained at a reasonable price and if the agency head or designee determines that the public interest is served by a waiver. In making a determination under this section, the agency head or designee may consider engineering estimates, catalogue prices, general market availability, and availability of certified MBEs in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between certified MBE and non-MBE cost of participation, and their impact on the overall cost of the contract to the State and any other relevant factor.
- C. An agency head may waive any of the provisions of Regulations .09-.10 for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate use of those procedures.
- D. When a waiver is granted, except waivers under Section C, one copy of the waiver determination and the reasons for the determination shall be kept by the MBE Liaison Officer with another copy forwarded to the Office of Minority Affairs.

MBE ATTACHMENT D6

MINORITY CONTRACTOR UNAVAILABILITY CERTIFICATE

Section I (to be completed by PRIME CONTRACTOR)

I hereby certify that the firm of _____
Name of Prime Contractor)

located at _____,
(Number) (Street) (City) (State) (Zip)

on _____ contacted certified minority business enterprise, _____
(Date) (Name of Minority Business)

_____ located at _____,
(Number) (Street) (City) (State) (Zip)

seeking to obtain a bid for work/service for project number _____, project name _____

List below the type of work/ service requested:

Indicate the type of bid sought, _____. The minority business enterprise identified above is either unavailable for the work /service in relation to project number _____, or is unable to prepare a bid for the following reasons(s):

The statements contained above are, to the best of my knowledge and belief, true and accurate.

(Name) (Title)

(Number) (Street) (City) (State) (Zip)

(Signature) (Date)

Note: Certified minority business enterprise must complete Section II on reverse side.

Section II (to be completed by CERTIFIED MINORITY BUSINESS ENTERPRISE)

I hereby certify that the firm of _____ MBE Cert.# _____
(Name of MBE Firm)
located at _____
(Number) (Street) (City) (State) (Zip)
was offered the opportunity to bid on project number _____, ON _____
(Date)
by _____
(Prime Contractor's Name) (Prime Contractor Official's Name) (Title)

The statements contained in Section I and Section II of this document are, to the best of my knowledge and belief, true and accurate.

(Name) (Title) (Phone)

(Signature) (Fax Number)

ATTACHMENT E – PRE-BID CONFERENCE RESPONSE FORM

**Solicitation Number - DHMH OPASS – 12-10923
Appraisal Services for Nursing Homes**

A Pre-Bid Conference will be held at 2:00 p.m., on June 29, 2012, at 201 W. Preston Street, Lobby Room L-1.
Please return this form by June 21, 2012, advising us of your intentions to attend.

Return via e-mail or fax this form to the Point of Contact:

Sabrina Lewis
Procurement & MBE Liaison
Department of Health and Mental Hygiene
201 W. Preston Street, Baltimore, MD 21201
Email: slewis@dhhm.state.md.us
Fax #: (410) 333-5321

Please indicate:

_____ Yes, the following representatives will be in attendance:

1.

2.

3.

_____ No, we will not be in attendance.

Signature

Title

Name of Firm (please print)

PRICING INSTRUCTIONS

Instructions

In order to assist Bidders in the preparation of their bid and to comply with the requirements of this solicitation, Bid Instructions and a Bid Form have been prepared. Bidders shall submit their bid on the form in accordance with the instructions on the form and as specified herein. Do not alter the forms or the bid form shall be rejected. The Bid Form is to be signed and dated, where requested, by an individual who is authorized to bind the Bidder to the prices entered on the Bid Page.

The Bid Page is used to calculate the Bidder's TOTAL BID PRICE. Follow these instructions carefully when completing your Bid Page:

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this IFB and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, i.e. .344 shall be 34 and .345 shall be 35.
- D) Every blank in every Bid Page shall be filled in. Any blanks may result in the Bid being regarded as non-responsive and thus rejected. Any changes or corrections made to the Bid Page by the Bidder prior to submission shall be initialed and dated.
- E) Except as instructed on the form, nothing shall be entered on the Bid Page that alters or proposes condition or contingencies on the prices. Alterations and/or conditions shall render the Bid non-responsive.
- F) It is imperative that the prices included on the Bid Form have been entered correctly and calculated accurately by the Bidder and that the respective total prices agree with the entries on the Bid Form. Any incorrect entries or inaccurate calculations by the bidder will be treated as provided in COMAR 21.05.03.03 E and 21.05.02.12.
- G) The “Total Contract Price” specified on the Bid Page is based on model quantities and will be used solely for price evaluation, comparison, and selection for recommendation for award. The quantities are not a guarantee of any maximum or minimum quantities under the contract. The actual amount to be paid to the Contractor shall be calculated using the Fixed Hourly Rate specified on the Bid Page (and the actual number of hours) provided by the Contractor.
- H) All bid prices entered on the Bid Page are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by this IFB. The bid prices shall include, but are not limited to; Labor, Profit/Overhead, General Operating, labor burden, and all other expenses except as expressly excluded in the IFB specifications. No other amounts will be paid to the Contractor.

Bid Page - Attachment F

The Bid shall contain all price information in the format specified on these pages. Complete the price sheets only as provided in the Bid Pricing Instructions. Do not amend, alter or leave blank any items on the Bid Page. If option years are included, Bidders must submit Bids for each option year. Failure to adhere to any of these instructions may result in the Bid being determined non-responsive and rejected by the Department.

Year	Estimated No. of Appraisals A	Price Per Appraisal B	Total C(A*B)
Base Year #1	72	\$	
Base Year #1	72	\$	
Base Year #1	72	\$	
Option Year #1	72	\$	
Option Year #1	72	\$	
Total Contract Price for all Base Years and Options. (Sum Totals in Column C)			(Basis for Award)

The Bidder agrees to provide the services for the IFB# DHMH-OPASS-12-10923 "Appraisal Services for Nursing Homes Reimbursed by the Maryland Medicaid Program" for the period beginning on or about October 1, 2012 through September 30, 2015 with two renewal options. Renewal Option #1: October 1, 2015 through September 30, 2016. Renewal Option #2: October 1, 2016 through September 30, 2017. In the event the contract does not commence on July 1, 2012, it shall be effective for three years from the actual commencement date.

Submitted By:

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

Company Name: _____

Company Address: _____

FEIN: _____

eMM #: _____

Telephone: (_____) _____ -- _____

Fax: (_____) _____ -- _____

eMail: _____ @ _____

NOTE #1: The Department intends to make a Single Award as a result of this solicitation.

The Contract that results from this IFB shall be an Indefinite Quantity with Firm Fixed Unit Prices as defined in COMAR 21.06.03.02 and .06.

NOTE #2: All Bid prices entered above are to be fully-loaded prices that include all costs/expenses associated with the provision of services as required by this IFB. The Bid prices shall include, but are not limited to: Labor, Profit/Overhead, General Operating and all other expenses except as expressly excluded in the IFB specifications. No other amounts will be paid to the Contractor.

ATTACHMENT G – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

Living Wage Requirements for Service Contracts

- A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry. The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
- (1) A Contractor who:
 - (A) Has a State contract for services valued at less than \$100,000, or
 - (B) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
 - (2) A Subcontractor who:
 - (A) Performs work on a State contract for services valued at less than \$100,000,
 - (B) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
 - (C) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(B) above, or B (3) or C below.
 - (3) Service contracts for the following:
 - (A) Services with a Public Service Company;
 - (B) Services with a nonprofit organization;
 - (C) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
 - (D) Services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.

- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.
- E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner of Labor and Industry shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's Website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner of Labor and Industry.
- H. A Contractor/Subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry Web site <http://www.dllr.state.md.us/labor/> and clicking on Living Wage for State Service contracts.

ATTACHMENT G-1 – MARYLAND LIVING WAGE REQUIREMENTS AFFIDAVIT

Maryland Living Wage Requirements-Service Contracts

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract is Exempt from the Living Wage Law

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland's Living Wage Law for the following reasons (check all that apply):

- ☐ Bidder/Bidder is a nonprofit organization
- ☐ Bidder/Bidder is a public service company
- ☐ Bidder/Bidder employs 10 or fewer employees and the proposed contract value is less than \$500,000
- ☐ Bidder/Bidder employs more than 10 employees and the proposed contract value is less than \$100,000

If the Contract is a Living Wage Contract

A. The Undersigned, being an authorized representative of the above named Contractor, hereby affirms our commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Bidder agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and to ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

B. _____(initial here if applicable) The Bidder/Bidder affirms it has no covered employees for the following reasons: (check all that apply):

- ☐ The employee(s) proposed to work on the contract will spend less than one-half of the employee's time during any work week on the contract

- ☐ The employee(s) proposed to work on the contract is 17 years of age or younger during the duration of the contract; or
- ☐ The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: _____

Signature of Authorized Representative

Date

Title

Witness Name (Typed or Printed)

Witness Signature

Date

Submit This Affidavit with Bid/Bid

ATTACHMENT H – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

Reference COMAR 21.05.08.08

A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a Bidder, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.

C. The Bidder warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail—attach additional sheets if necessary):

E. The Bidder agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Bidder shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Bidder has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date:_____ By:_____
(Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH BID

ATTACHMENT I - FEDERAL FUNDS ATTACHMENT

A Summary of Certain Federal Fund Requirements and Restrictions
[Details of particular laws, which may levy a penalty for noncompliance,
are available from the Department of Health and Mental Hygiene.]

1. Form and rule enclosed: 18 U.S.C. 1913 and section 1352 of P.L. 101-121 require that all *prospective* and present sub-grantees (this includes all levels of funding) who receive more than \$100,000 in federal funds must submit the form "Certification Against Lobbying". It assures, generally, that recipients will not lobby federal entities with federal funds, and that, as is required, they will disclose other lobbying on form SF-LLL.
2. Form and instructions enclosed: "Form LLL, Disclosure of Lobbying Activities" must be submitted by those receiving more than \$100,000 in federal funds, to disclose any lobbying of federal entities (a) with profits from federal contracts or (b) funded with nonfederal funds.
3. Form and summary of Act enclosed: Sub-recipients of federal funds on any level must complete a "Certification Regarding Environmental Tobacco Smoke," required by Public Law 103-227, the Pro-Children Act of 1994. Such law prohibits smoking in any portion of any indoor facility owned or leased or contracted for regular provision of health, day care, early childhood development, education or library services for children under the age of 18. Such language must be included in the conditions of award (they are included in the certification, which may be part of such conditions.) This does not apply to those solely receiving Medicaid or Medicare, or facilities where WIC coupons are redeemed.
4. In addition, federal law requires that:
 - A) OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations requires that grantees (both recipients and sub-recipients) which expend a total of \$300,000 or more (\$500,000 for fiscal years ending after December 31, 2003) in federal assistance shall have a single or program-specific audit conducted for that year in accordance with the provisions of the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156 and the Office of Management and Budget (OBM) Circular A-133. All sub-grantee audit reports, performed in compliance with the aforementioned Circular shall be forwarded within 30 days of report issuance to the DHMH, Audit Division, 605 S. Chapel Gate Lane, Old School Building, Baltimore, MD 21229.
 - B) All sub-recipients of federal funds comply with Sections 503 and 504 of the Rehabilitation Act of 1973, the conditions of which are summarized in item (C).
 - C) Recipients of \$10,000 or more (on any level) must include in their contract language the requirements of Sections 503 (language specified) and 504 referenced in item (B).

Section 503 of the Rehabilitation Act of 1973, as amended, requires recipients to take affirmative action to employ and advance in employment qualified disabled people. An affirmative action program must be prepared and maintained by all contractors with 50 or more employees and one or more federal contracts of \$50,000 or more.

This clause must appear in subcontracts of \$10,000 or more:

- a) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b) The contractor agrees to comply with the rules, regulations, and relevant orders of the secretary of labor issued pursuant to the act.
- c) In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the secretary of labor issued pursuant to the act.
- d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the director, provided by or through the contracting office. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- e) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- f) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the [federal] secretary issued pursuant to section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 791 et seq.) prohibits discrimination on the basis of handicap in all federally assisted programs and activities. It requires the analysis and making of any changes needed in three general areas of operation- programs, activities, and facilities and employment. It states, among other things, that:

Grantees that provide health... services should undertake tasks such as ensuring emergency treatment for the hearing impaired and making certain that persons with impaired sensory or speaking skills are not denied effective notice with regard to benefits, services, and waivers of rights or consents to treatments.

- D) All sub-recipients comply with Title VI of the Civil Rights Act of 1964 that they must not discriminate in participation by race, color, or national origin.
- E) All sub-recipients of federal funds from SAMHSA (Substance Abuse and Mental Health Services Administration) or NIH (National Institute of Health) are prohibited from paying any direct salary at a rate more than Executive Level 1 per year. (This includes, but is not limited to, sub-recipients of

the Substance Abuse Prevention and Treatment and the Community Mental Health Block Grants and NIH research grants.)

- F) There may be no discrimination on the basis of age, according to the requirements of the Age Discrimination Act of 1975.
- G) For any education program, as required by Title IX of the Education Amendments of 1972, there may be no discrimination on the basis of sex.
- H) For research projects, a form for Protection of Human Subjects (Assurance/ Certification/ Declaration) should be completed by each level funded, assuring that either: (1) there are no human subjects involved, or that (2) an Institutional Review Board (IRB) has given its formal approval before human subjects are involved in research. [This is normally done during the application process rather than after the award is made, as with other assurances and certifications.]
- I) In addition, there are conditions, requirements, and restrictions which apply only to specific sources of federal funding. These should be included in your grant/contract documents when applicable.

CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Award No.	Organizational Entry
Name and Title of Official Signing for Organizational Entry	Telephone No. Of Signing Official
Signature of Above Official	Date Signed

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. Contract <input type="checkbox"/> b. Grant <input type="checkbox"/> c. Cooperative Agreement <input type="checkbox"/> d. Loan <input type="checkbox"/> e. Loan guarantee <input type="checkbox"/> f. Loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. Bid/offer/application <input type="checkbox"/> b. Initial award <input type="checkbox"/> c. Post-award	3. Report Type: <input type="checkbox"/> a. Initial filing <input type="checkbox"/> b. Material change For Material Change Only: Year _____ quarter _____ Date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>		
b. Individuals Performing Services <i>(including address if different from No. 10a) (last name, first name, MI):</i>		
11. Amount of Payment <i>(check all that apply)</i> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment <i>(check all that apply)</i> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____	
12. Form of Payment <i>(check all that apply)</i> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: <div style="text-align: center; font-style: italic;">(attach Continuation Sheet(s) SF-LLLA, if necessary)</div>		
15. Continuation Sheet(s) SF-LLLA attached: <input type="checkbox"/> Yes <input type="checkbox"/> No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether sub-awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub-award recipient. Identify the tier of the sub-awardee, e.g., the first sub-awardee of the prime is the 1st tier. Sub-awards include but are not limited to subcontracts, sub-grants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Sub-awardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Bid (IFB) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/bid control number assigned by the Federal agency). Include prefixes, e.g., "IFB-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
10. (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form and print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service
Health Resources and
Service Administration
Rockville, MD 20857

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro Children Act of 1994, Part C Environmental Tobacco Smoke, requires that smoking not be permitted in any portion of any indoor facility owned, or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such Federal funds. The law does not apply to children's services provided in private residences, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole sources of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing this certification, the Bidder/contractor (for acquisitions) or applicant/grantee (for grants) certifies that the submitting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The submitting organization further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children's services and that all sub-recipients shall certify accordingly.

Signature of Authorized Certifying Individual

ATTACHMENT J – NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT ("Agreement") is made as of this ____ day of ____, 20____, by and between the State of Maryland ("the State"), acting by and through its Department of Health and Mental Hygiene (the "Department") and _____ (the "Contractor").

RECITALS

WHEREAS, the Contractor has been awarded a contract (the "Contract") for Appraisal Services for Nursing Homes Reimbursed by the Maryland Medicaid Program Contract No. DHMH OPASS 12-10923 dated _____, 201____ following an Invitation for Bids ("IFB") DHMH OPASS 12-10923; and

WHEREAS, in order for the Contractor to perform the work required under the Contract, it will be necessary for the State at times to provide the Contractor and the Contractor's employees, agents, and subcontractors (collectively the "Contractor's Personnel") with access to certain information the State deems confidential information (the "Confidential Information").

NOW, THEREFORE, in consideration of being given access to the Confidential Information in connection with the IFB and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Confidential Information means any and all information provided by or made available by the State to the Contractor in connection with the Contract, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. Contractor shall not, without the State's prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information provided by the State except for the sole and exclusive purpose of performing under the Contract. Contractor shall limit access to the Confidential Information to the Contractor's Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor's Personnel are attached hereto and made a part hereof as Exhibit A. Each individual whose name appears on Exhibit A shall execute a copy of this Agreement and thereby be subject to the terms and conditions of this Agreement to the same extent as the Contractor. Contractor shall update Exhibit A by adding additional names (whether Contractor's personnel or a subcontractor's personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor's performance of the IFB or who will otherwise have a role in performing any aspect of the IFB, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.
4. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.

5. Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor's Personnel or the Contractor's former Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).
6. Contractor shall, at its own expense, return to the Department, all copies of the Confidential Information in its care, custody, control or possession upon request of the Department or on termination of the Contract.
7. A breach of this Agreement by the Contractor or by the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and to seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
9. Contractor and each of the Contractor's Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement and the Contractor shall provide originals of such executed Agreements to the State.
10. The parties further agree that:
 - a. This Agreement shall be governed by the laws of the State of Maryland;
 - b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State;
 - c. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
 - d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
 - e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures; and
 - f. The Recitals are not merely prefatory but are an integral part hereof.

Contractor: _____
Company Name

Department of Health & Mental
Hygiene:

By: _____ (SEAL)

By: _____

Printed Name and Title:

Printed Name and Title:

Date: _____

Date: _____

EXHIBIT A

**LIST OF CONTRACTOR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS TO
THE CONFIDENTIAL INFORMATION**

Printed Name and Address of Individual/Agent	Employee (E) or Agent (A)	Signature	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

EXHIBIT B

CERTIFICATION TO ACCOMPANY RETURN OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Agreement by and between the State of Maryland and _____ (“Contractor”) dated _____, 20____ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, HAVING MADE DUE INQUIRY.

DATE: _____

NAME OF CONTRACTOR: _____

BY: _____
(Signature)

TITLE: _____
(Authorized Representative and Affiant)